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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,858	07/25/2001	Robin Helweg-Larsen	4830-001	6183
24112	7590	08/25/2005	EXAMINER	
COATS & BENNETT, PLLC P O BOX 5 RALEIGH, NC 27602			HECK, MICHAEL C	
		ART UNIT	PAPER NUMBER	
		3623		

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/912,858	HELWEG-LARSEN, ROBIN
	<b>Examiner</b>	<b>Art Unit</b>
	Michael C. Heck	3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 25 July 2001.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-20 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 25 July 2001 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

### **DETAILED ACTION**

1. The following is a First Office Action in response to the application filed 25 July 2001. Claims 1-20 are pending in this application and have been examined on the merits as discussed below.

#### ***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 216. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the Examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### ***Claim Rejections - 35 USC § 112 and 35 USC § 101***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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4. **Claims 12-13** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 12-13 provide for the use of "monitoring a facility" and "monitoring a process", but, since the claims do not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

5. **Claims 12-13** are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

#### ***Claim Rejections - 35 USC § 101***

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claims 1-9 and 14-20** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the “progress of science and the useful arts” (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For the process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts. In the present case, **claims 1 and 14** only recite an abstract idea. As to **claim 1**, the recited steps of generating a pool of laborers; associating an employer with one or more jobs to be performed; and facilitating at least one of the laborers in said pool of laborers to work for said employer remotely over a network does not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper. The method only constitutes an idea for promoting business, therefore, is deemed to be directed to non-statutory subject matter. As to **claim 14**, the recited steps of establishing a service provider that evaluates the laborers for skills; ensuring that the laborers have access to laborer computers of adequate processing power to perform certain jobs; connecting some of said laborers to an employer over a network such that the laborers can communicate with the employer; charging the laborers to be connected; and advancing the laborers through ranks contingent upon successful completion of one or more jobs for the employer does not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper. The method only

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constitutes an idea for allowing laborers to perform jobs from a remote location, therefore, is deemed to be directed to non-statutory subject matter.

As to technological arts recited in the preamble, mere recitation in the preamble (i.e., intended or field of use) or mere implications of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea unless there is positive recitation in the claim as a whole to breathe life and meaning into the preamble. In the present case, none of the recited steps are directed to anything in the technological arts as explained above. Looking at the claim as a whole, nothing in the body of the claim recites any structure or functionality to suggest that a computer performs the recited steps. Therefore, the preamble is taken to merely recite a field of use.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention promotes a business and allows laborers to perform jobs from a remote location, which is merely an idea or concept, therefore is not considered useful since it does not possess "real world" value. The invention is simply an idea for a business opportunity with delineated ground rules of operation and potential uses.

Looking at the claims as a whole, nothing in the body of the claims recite any structure or functionality to suggest that a computer performs a task. While claim 7 recites facilitating at least one of the laborers in said pool of laborers to work for said employer remotely over the Internet, this amounts to only directing how a laborer is to

remotely perform their job where nothing is done (i.e., computing) to breathe life into the invention.

Since the claimed invention, as a whole, is not within the technological arts as explained above, and does not produce a useful, concrete, and tangible result, the same rejection as stated above for claims 1 and 14 applies to **claims 2-9 and 15-20**.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

8. **Claims 1, 3, 7-11** are rejected under 35 U.S.C. 102(a) as being anticipated by Nielsen (U.S. Patent 5,948,054). Nielsen discloses a remote job performance system comprising:

- [Claim 1] generating a pool of laborers (col. 2, lines 1-3, Nielsen teaches the matchmaking service maintains a database of consultants.);
- associating an employer with one or more jobs to be performed (col. 3, lines 57-60, Nielsen teaches a customer with a question connects to a world wide web server which offers the matchmaking service. The customer fills in a form with a natural language description of the question. The Examiner interprets a question to be a job and that the question is associated with a customer.); and
- facilitating at least one of the laborers in said pool of laborers to work for said employer remotely over a network (col. 3, lines 54-55 and col. 4, lines 51-59, Nielsen teaches matching customers with questions to consultants with answers. The consultant finds a question on his or her page that he or she wants to answer, the consultant clicks a button next to the question, causing a message to be transmitted to the server which “reserves” the question for the

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consultant and removes it from the personal web pages for the other consultants. The consultant types up the answer to the question and returns it to the server. The server looks up the customer's email address in the database and forwards the answer to the customer who is billed for the service. The Examiner interprets the work is done remotely.).

- [Claim 3] wherein said employer pays said laborer (col. 3, lines 59-65, Nielsen teaches the customer is billed for the service and the consultant's payment for the job may partly be dependent on the customer's satisfaction.).
- [Claim 7] facilitating at least one of the laborers in said pool of laborers to work for said employer remotely over the Internet (col. 3, line 57 to col. 4, line 15, Nielsen teaches a customer with a question connects to a world wide web server which offers the matchmaking service. Then the customer fills in a form with a natural language description of the question. The matchmaking service posts the question on personal web pages for consultants who have the background to answer the question.).
- [Claim 8] generating an alert for at least one of said laborers in said pool of laborers when a particular job is available col. 4, lines 13-15 and 51-56, Nielsen teaches the matchmaking service posts the question on personal web pages for consultants who have the background to answer the question. The consultant finds a question on his or her page that he or she wants to answer, the consultant clicks a button next to the question, causing a message to be transmitted to the server which "reserves" the question for the consultant and removes it from the personal web pages for the other consultants. The Examiner interprets the posting of the question on a personal web page to be the same as generating an alert.).
- [Claim 9] wherein employers pay a service provider to be listed on a service provider that performs said facilitating (col. 3, line 64 to col. 4, line 1 and col. 4, lines 57-69, Nielsen teach the customer provides payment information: either a credit card number, an account number (if the customer has an account with the matchmaking service), or the customer's general payment method for Internet commerce. The consultant types up the answer to the question and returns it to the server. The server looks up the customer's email address in the database and forwards the answer to the customer who is billed for the service.).

**Claims 10-11** substantially recite the same limitations as that of claims 1 and 7 with the distinction of the recited method being a system. Hence the same rejection for claims 1 and 7 as applied above applies to claims 10-11.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. **Claim 2 and 13** are rejected under 35 U.S.C. 103(a) as being unpatentable over Nielsen (U.S. Patent 5,948,054) in view of Bukow (U.S. Patent 6,567,784). Nielsen discloses a remote job performance system but fails to teach wherein said laborers pay a service provider for working for said employer. Bukow teaches a method of matching projects with workers. The bid allows a worker to specify how much he/she is willing to pay for a successful match. This allows workers to pay a small fee for a preference in matching (Abstract, figure 1, and col. 4, lines 10-19). It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to include the "bid for match" capability of Bukow with the teaching of Nielsen since Nielsen teaches matching customers with consultants (col. 3, lines 54-55). Both Bukow and Nielsen are matching remote workers to jobs/projects; therefore there is a motivation or suggestion to combine. A reasonable expectation of success exists since both Bukow and Nielson

teach paying for services rendered. The combination of Bukow and Nielsen teach all the limitations of the claimed invention.

- [Claim 13] wherein said job environment comprises monitoring a process (Bukow: col. 2, lines 53-65, Bukow teach activities are tasks that are to be performed. Examples include business modeling and software programming. The examiner interprets the said examples to be examples of a process.)

11. **Claims 12** is rejected under 35 U.S.C. 103(a) as being unpatentable over Nielsen (U.S. Patent 5,948,054) in view of Bukow (U.S. Patent 6,567,784) as applied to claim 10. The Examiner takes Official Notice that it is old and well known in the subcontracting art to outsource security services, i.e., plant, facilities or home. For example Brinks home security service remotely monitors motion detectors and security devices that potentially indicate an intruder is in the home, and then takes actions to rectify. Also, it is well known in business to use a "rent a cop" approach to facility security during not peak hours, i.e., USPTO. Again, the security personnel would remotely monitor video displays of the premises to ensure no unauthorized activity was taking place. Therefore, it would be obvious to one of ordinary skill in the art to use remote subcontract services to monitor a facility.

12. **Claims 4-6 and 14-20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Nielsen (U.S. Patent 5,948,054) in view of Bukow (U.S. Patent 6,567,784), and further in view of Hartmann et al. (Hartmann et al., Externalizing the Workforce: Australian Trends and Issues for HRM, International Journal of Manpower,

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Vol. 21, No. 1, 2000, p. 7-20 [EBSCO]). Nielsen and Bukow disclose a remote job performance system comprising:

- [Claim 14] establishing a service provider that evaluates the laborers for skills (Nielsen: col. 4, lines 16-23, Nielsen teaches in determining which consultants have the background to answer a given question, the matchmaking service maintains a database of consultants who are willing to answer questions. For each consultant, the database has a description of that consultant's area of expertise in terms of the categories used by the customers to classify their questions and in terms of a natural language description of the consultant's abilities.);
- ensuring that the laborers have access to laborer computers of adequate processing power to perform certain jobs (Nielsen: col. 5, lines 28-30, Nielsen teaches the consultant computer includes a processor, a memory, and an interface for facilitation input and output in the source computer.);
- connecting some of said laborers to an employer over a network such that the laborers can communicate with the employer (Nielsen: col. 4, line 66 to col. 5, line 4, Nielsen teaches the consultant may need to ask clarifying questions to the customer before answering the question. To preserve the customer's anonymity, these messages are not sent directly between the consultant and the customer but are gatewayed through the matchmaking service, which maintains a database of both email addresses.);
- charging the laborers to be connected (Bukow: Abstract, figure 1, and col. 4, lines 10-19, Bukow teaches a method of matching projects with workers. The bid allows a worker to specify how much he/she is willing to pay for a successful match. This allows workers to pay a small fee for a preference in matching.); and

Nielsen and Bukow fail to teach advancing the laborers through ranks contingent upon successful completion of one or more jobs for the employer. Nielsen, however, teaches a consultant who consistently receives poor scores is removed from the service (col. 4, lines 64-65). Bukow teaches a worker's reputation is evaluated quantitatively by computing the worker's average rating as one characteristic and computing the total amount of feedback given and received as another characteristic, e.g., number of

project creator evaluations plus number of worker evaluations of projects. Thus, workers are rewarded for contributing feedback to the community (col. 4, lines 49-55). Hartmann et al. teach new technologies foster work effort in which output is measurable and individuals are paid in terms of output quantity and quality. Through economies of scale, some contracting organizations can provide the same benefits to employees, as they would be receiving if directly employed by the outsourcing organization. Both offer training, enterprise agreements and incentives (p. 9, para 1, p. 10, para 2). The Examiner interprets the same benefits to employees and incentives to include promotions. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to include the human resource teachings of Hartmann et al. with the teaching of Nielsen and Bukow since Bukow teaches a worker's reputation is evaluated (col. 4, lines 49-55). To control cost, companies desire to pay only for services rendered. Nielsen teaches matching customers with questions to consultants with answers (col. 3, lines 54-55). Bukow teaches matching projects and workers (abstract). Hartmann et al. teach new technologies foster work effort in which output is measurable and individuals are paid in terms of output quantity and quality (p. 9, para 1). Nielsen, Bukow and Hartmann et al. teach outsourcing or externalizing the workforce, therefore there is motivation or suggestion to combine. There is a reasonable expectation of success since Nielsen, Bukow and Hartmann et al. compliment each other regarding the business aspects of outsourcing, and Nielsen, Bukow and Hartmann et al. teach all the limitations of the claimed invention.

- [Claim 15] wherein establishing a service provider that evaluates laborers for skills comprises establishing a service provider within the employer (Bukow:

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col. 5, lines 12-15, Bukow teaches that after a project is created, the creator signals on a "Match" user interface object to cause the project to be matched against the current set of workers.).

- [Claim 16] receiving payment from the employer and passing at least a portion of the payment to the laborer in exchange for labor performed by the laborer for the employer (Nielsen: col. 4, lines 62-64, Nielsen teaches the consultant's payment for the job may partly be dependent on the customer's satisfaction.).
- [Claim 17] allowing laborers that have advanced through one or more ranks to be connected to the employer for a job for which a laborer who has not advanced through one or more ranks is not eligible (Nielsen: col. 4, lines 19-22 and 64-65, Nielsen teaches that for each consultant, the database has a description of that consultant's area of expertise in terms of the categories used by the customers to classify their questions and in terms of a natural language description of the consultant's abilities. A consultant who consistently receives poor scores is removed from the service. Bukow: col. 4, lines 49-55, Bukow teaches a worker's reputation is evaluated quantitatively by computing the worker's average rating as one characteristic and computing the total amount of feedback given and received as another characteristic, e.g., number of project creator evaluations plus number of worker evaluations of projects. Thus, workers are rewarded for contributing feedback to the community. Hartmann et al: p. 17, para 1, Hartmann et al. teach that one of the potential benefits of externalization is the opportunity to hire performance rather than train up to performance. But the performance of capable individuals once they are in the job situation may also be influenced by whether performance can be measured, by the availability of further work of a contractual or permanent nature and by the nature of the work. The availability of other work or of the opportunity for referral to other work on the basis of current performance clearly can provide an incentive for contractors to ensure that the quality of their work is high.).
- [Claim 18] demoting a laborer for failing to perform a job adequately (Nielsen: col. 4, lines 64-65, Nielsen teaches a consultant who consistently receives poor scores is removed from the service.).
- [Claim 19] denying jobs to laborers on the basis of a demotion (Nielsen: col. 4, lines 64-65, Nielsen teaches a consultant who consistently receives poor scores is removed from the service.).
- [Claim 20] advancing the laborer through ranks contingent upon successful completion of training (Hartmann et al.: p. 10, para 2, Hartmann et al. teach that through economies of scale, some contracting organizations can provide

the same benefits to employees, as they would be receiving if directly employed by the outsourcing organization. Both offer training, enterprise agreements and incentives. The Examiner interprets the same benefits to employees and incentives to include promotions.).

**Claims 4, 5 and 6** substantially recite the same limitations as that of claims 14, 17 and 20 with the distinction of the recited method being another method. Hence the same rejection for claims 14, 17 and 20 as applied above applies to claims 4, 5 and 6.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure

- Mitsuoka et al. (U.S. Patent 6, 466, 914) disclose a job brokering apparatus and recording medium.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Michael C. Heck whose telephone number is (571) 272-6730. The Examiner can normally be reached Monday thru Friday between the hours of 8:30am - 4:30pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq R. Hafiz can be reached on (571) 273-6729.

Any response to this action should be mailed to:

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*Mch*  
mch  
22 August 2005

*Susanna Diaz*  
**SUSANNA M. DIAZ**  
**PRIMARY EXAMINER**

*AU 3623*